

**IN THE MATTER OF THE ARBITRATION**

<b>BLACK HAWK COUNTY,</b>	:	<b>CEO #81/SECTOR 2</b>
<b>Employer,</b>	:	
<b>vs.</b>	:	<b>ARBITRATION AWARD</b>
<b>PUBLIC PROFESSIONAL AND MAINTENANCE EMPLOYEES UNION LOCALE 2003 (HEALTH),</b>	:	
<b>Employees.</b>	:	

**I. FACTS**

This matter was scheduled for arbitration by agreement of the parties pursuant to Chapter 20 of the Iowa Code, on Friday, May 26th, 2006. Appearing on behalf of Black Hawk County (hereinafter referred to as County) were Brian L. Gruhn and Donald C. Hoskins, on behalf of Ray and Associates.

Appearing on behalf of the Public Professional and Maintenance Employees Union Locale 2003 (hereinafter referred to as Union) was James Rasmussen, business representative.

The hearing was electronically recorded. The parties submitted evidence, exhibits and rebuttal arguments. The parties chose not to submit post hearing briefs or exhibits. In attendance for the County were June Watkins, Human Resources Director, and Sherri L. Niles, Administrator of Country View Care Facility.

In attendance for the Union were Helida Vaala, Dale Tanner, and Tawnya Albertson, Union stewards.

## **II. IMPASSE ITEMS**

The parties submitted final offers as required within the appropriate time frames. A prior fact-finding had been conducted and on March 18, 2006, Edward L Suntrup issued his recommendations. The resultant Impasse Items and the respective positions of each party and the fact finder were as follows:

### **Item #1: Leaves of Absence**

- A. Article 13; Stewards Section 1
- B. Article 8, Federal Family and Medical Leave Act, Section 6

### **A. STEWARDS.**

**UNION:** Employees designated as stewards or bargaining team members by the Union shall receive a paid leave of absence for the employees' hours or work necessary to attend joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations, or steps of the grievance procedure and grievance arbitrations.

**COUNTY:** Current Contract Language which has been found by PERB to be permissive and therefore absent from the four corners of the contract.

**FACT-FINDER:** Employees designated as stewards or bargaining team members by the Union shall receive a paid leave of absence for the employees' hours or work necessary to attend joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations, or steps of the grievance procedure and grievance arbitrations.

### **B. FMLA.**

**UNION:** Maintain current language specifically that which is contained within paragraph two (2) which is in controversy:

An employee who requests and is granted a leave of absence pursuant to the 1993 Federal Family & Medical Leave Act (herein after called FMLA) may use accrued paid leave (i.e. sick leave, vacation compensatory time, personal leave) that the employee had accumulated prior to the start of the leave of absence. The employee shall designate in writing to the Employer the type and

amount of paid leave to be used. The employer may not designate leave taken pursuant to the agreement which was not requested under the FMLA as FMLA leave, except in the case of the personal FMLA illness of the employee the Employer may designate absences eligible for FMLA as FMLA and require the use of accumulated paid sick leave.

COUNTY:

An employee who requests and is granted leave of absence pursuant to the 1993 Federal Family and Medical Leave Act (hereinafter called FMLA) shall use accrued paid leave (i.e., sick leave, vacation, compensatory time, personal leave) at the same time as the FMLA leave is used.

FACT-FINDER:

Article 8, Section 6, Paragraph 2, remain unchanged. Therefore providing:

Maintain current language specifically that which is contained within paragraph two (2) which is in controversy:

An employee who requests and is granted a leave of absence pursuant to the 1993 Federal Family & Medical Leave Act (herein after called FMLA) may use accrued paid leave (i.e. sick leave, vacation compensatory time, personal leave) that the employee had accumulated prior to the start of the leave of absence. The employee shall designate in writing to the Employer the type and amount of paid leave to be used. The employer may not designate leave taken pursuant to the agreement which was not requested under the FMLA as FMLA leave, except in the case of the personal FMLA illness of the employee the Employer may designate absences eligible for FMLA as FMLA and require the use of accumulated paid sick leave.

A. Section 1; Probable Work Week

B. Section 10; Work Schedule

C. Section 4; Reporting Period

UNION:

- The normal work week for a full-time employee shall be thirty-six hours or more with all benefits. The normal work week for a part-time employee shall be less than thirty-six hours with pro-rated vacation and insurance benefits. Part-time employees working less than twenty hours per week receive no benefits.

The normal work week for a full-time employee shall be defined forty hours or more with all benefits. The normal work week for a part-time employee shall be less than forty hours with prorated vacation per Article 25 and prorated insurance per Article 21.

The work week of a permanent, full-time employee shall be defined as forty (40) hours per week, or eighty (80) hours in a fourteen (14) day work period. Full-time employees shall be entitled to full benefits as so stated in the labor contract. This language to be effective July 1, 2006.

4

## **B. WORK SCHEDULE.**

### **UNION:**

Replace Section 10, "Work Schedule" with a new section entitled "Work Hours" to read as follows:

The work day for full-time employees shall be eight (8) hours including a paid lunch period and breaks. The work week for full-time employees shall consist of five (5) days of work, consecutive if possible, with at least every-other weekend (Saturday and Sunday) off-duty. Employees shall not be required to find their own replacements in order to have a time off request approved. Except for emergencies and involuntary overtime assignments, a change in an employee's shift start time or days off shall be notified to the employee at least three (3) days in advance.

### **COUNTY:**

Section 10. Work Schedule. Language should be stricken and in lieu thereof the following should appear:

Employee's one (1) pay period (two weeks) work schedules should be posted by the Employer at least two (2) weeks in advance. The posted work schedule will not be changed at the employee's request except in case of an emergency or an approved request for time off. Employees shall not be required to find their own replacements in order to have a time off request approved. Except for emergencies and involuntary overtime assignments, schedule changes shall be notified to the employees at least three (3) days in advance.

### **FACT-FINDER:**

Section 10. Work Schedule. Current contract which provides:

Employee's two (2) pay period (four weeks) work schedules will be posted by the Employer at least three (3) weeks in advance. The posted work schedule will not be changed at the employee's request except in the case of an emergency or an approved request for time off. Employees shall not be required to find their own replacement in order to have a time off request approved. Except for emergencies and involuntary overtime assignments,

schedule changes shall be notified to the employees at least three (3) days in advance.

### **C. REPORTING PERIOD.**

**UNION:**

All Employees may be required at the discretion of management, to report to their work stations at least ten (10) minutes prior to the start of their assigned shifts or remain for a maximum of ten (10) minutes. The ten (10) minute period either before a shift or at the end of a shift shall be used to brief staff, exchange resident information, confirm arrival of employees on the next shift and shall be with pay.

**COUNTY:**

All employees may be required at the discretion of management to report to their work stations at least ten (10) minutes prior to the start of their assigned shifts or remain on duty at the end of the shift for a maximum of ten (10) minutes. The ten (10) minute period either before a shift or at the end of a shift shall be used to brief staff, exchange resident information, confirm arrival of employees on the next shift and shall be with pay.

**FACT-FINDER:**

All employees may be required at the discretion of management, to report to their work stations at least ten (10) minutes prior to the start of their assigned shifts or remain on-duty at the end of the shift for a maximum of ten (10) minutes. The ten (10) minute period either before a shift or at the end of a shift shall be used to brief staff, exchange resident information, confirm arrival of employees on the next shift and shall be with pay at straight time rate.

**Item #3:**      Article 20; Evaluations

**UNION:**

Paragraph 2 to provide:

The employees shall sign the evaluation form after discussion of its contents with the supervisor and the opportunity to write a rebuttal which may be attached to the evaluation form. Employees may grieve the results of a below-average evaluation.

COUNTY:

Current contract language which provides:

The employees shall sign the evaluation form after discussion of its contents with the supervisor and the opportunity to write a rebuttal which may be attached to the evaluation form. Employees may grieve the results of a below-average evaluation if it results in the loss of a merit increase.

FACT-FINDER:

Paragraph 2 to provide:

The employees shall sign the evaluation form after discussion of its contents with the supervisor and the opportunity to write a rebuttal which may be attached to the evaluation form. Employees may grieve the results of a below-average evaluation.

Item #4: Article 21; Insurance

- A. Monthly Premium
- B. Deductibles

A. PREMIUMS

A. The Union, County, and Fact-finder are all in agreement that current language of the contract should be modified so as to increase the monthly premium that an employee pays for single coverage insurance from \$25.00 per month to \$50.00 per month and those who select family coverage increase their monthly contribution from \$50.00 per month to \$100.00 per month. Likewise, co-payments from the employees for physician co-pay should be increased to \$15.00 per visit. The parties and fact-finder vary as to the following components of health insurance:

## **B. DEDUCTIBLES.**

**UNION:**

The Union proposes to maintain current contract language which provides for deductibles of \$250.00 for a single plan and \$500.00 for a family plan for the preferred provider plan. Likewise, Union is proposing to maintain current contract language which provides for deductibles of \$600.00 for a single plan and \$1,200.00 for a family plan for non-network providers.

**COUNTY:**

The County proposes modifications to deductibles as follows:

Increasing the deductible to \$500.00 for a single plan and \$1,000.00 for a family plan for the preferred provider plan. Increasing the deductible to \$1,000.00 for a single plan and \$2,500.00 for a family plan for non-network providers.

**FACT-FINDER:**

The fact finder proposed increasing the deductible from \$250.00 to \$500.00 for a single plan and \$500.00 to \$1,000.00 for a family plan who select the preferred provider plan. Conversely, maintaining the deductible of \$600.00 for a single plan and \$1,200.00 for a family plan for non-network providers.

**Item #5:**

Article 19; Job Classification & Straight-Time Hourly Wage.

**UNION:**      A.

Change Section 2, Hourly Wage Rates to read as follows:

Reference is made here to Exhibit "B", General Services Salary Schedule for the 2007 fiscal year which shall become effective on July 1, 2006, and shall remain in effect during the term of this Agreement. The 2007 fiscal year schedule shall be an increase of three (3%) percent over the previous year's fiscal year salary schedule.

In addition, employees eligible to receive an in-grade pay increment shall do so pursuant to Article 35 of this Agreement.



B. Change Exhibit "A" to read:

GS-13 Licensed Practical Nurse – and move all LPN's from the employees' GS-12 step to the same step on GS-13 on July 1, 2006.

COUNTY:

Section 2; Hourly Wage Rates, change the language as follows:

Reference is made here to Exhibit "B", General Salary Schedule for 2007 fiscal year which shall become effective the start of the pay period closest to July 1, 2006, and shall remain in effect during the term of this Agreement. The 2007 fiscal year salary schedule shall be an increase of two and three-fourths percent (2.75%) over the previous fiscal year's salary schedule. In addition, employees eligible to receive an in grade pay increment shall do so pursuant to Article 35 of this Agreement. Increase pay grade GS-12 (LPN) by one dollar \$1.00).

FACT-FINDER:

A \$2.75 ATB increase for all members of the bargaining unit, and \$1.00 per hour increase for LPN's in order to bring them closer to those doing comparable work in Dubuque County.

The wage increase becomes effective on the date itself of July 1, 2006.

**Item #6:**

Vacation; Article 25; Section 4

UNION:

Vacation shall be scheduled with the approval of the Employer who shall endeavor to schedule vacation with regard to maintaining the department's operating efficiency, and so far as possible in accordance with the employee's preferred requests. Employees may submit priority vacation requests for **one full shift or multiples thereof during** the next fiscal year between March 1 and April 1 of each calendar year. Conflicting priority vacation requests shall be awarded on the basis of the greatest seniority. Non-priority vacation requests submitted after April 1 shall be awarded on a first come, first served basis. Such non-priority requests shall be approved or disapproved by written notice to the employee within seven (7) calendar days of the employee's written request. Vacation leave shall be taken in increments of not less than

two (2) hours. There shall be no restrictions placed upon the number of weekends that an employee may request for vacation use. Once a vacation request is approved, it may not be changed without the consent of the employee.

COUNTY:

Vacation shall be scheduled with the approval of the Employer who shall endeavor to schedule vacation with regard to maintaining the department's operating efficiency, and **insofar** as possible, in accordance with the employee's preferred requests. Employees may submit priority vacation requests for the next fiscal year between March 1 and April 1 of each calendar year. **These priority vacation requests shall be approved or disapproved no later than May 1.** Conflicting priority vacation requests shall be awarded on the basis of the **greater** seniority. **Priority requests shall only be permitted for one full shift or multiples thereof.** Non-priority vacation requests submitted after April 1 shall be awarded on a first come, first served basis. Such non-priority requests shall be approved or disapproved by written notice to the employee within seven (7) calendar days of the employee's written request. **Non-priority requests may be taken in increments of not less than two (2) hours.** Once a vacation request is approved, it may not be changed without the consent of the employee. **Non-priority vacation requests for week-ends may be restricted by the employer in view of maintaining the department's operating efficiency. Good faith efforts shall be made by the employer to distribute vacation requests for week-ends as equitably as possible.**

FACT-FINDER:

Vacation shall be scheduled with the approval of the Employer who shall endeavor to schedule vacation with regard to maintaining the department's operating efficiency, and **insofar** as possible, in accordance with the employee's preferred requests. Employees may submit priority vacation requests for the next fiscal year between March 1 and April 1 of each calendar year. **These priority vacation requests shall be approved or disapproved no later than May 1.** Conflicting priority vacation requests shall be awarded on the basis of the **greater** seniority. **Priority requests shall only be permitted for one full shift or multiples thereof.** Non-priority vacation requests submitted after April 1 shall be awarded on a first come, first served basis. Such non-priority requests shall be approved or disapproved by written notice to the employee

within seven (7) calendar days of the employee's written request. **Such requests shall only be for one full shift or multiples thereof.** Once a vacation request is approved, it may not be changed without the consent of the employee. **Non-priority vacation requests for week-ends may be restricted by the employer in view of maintaining the department's operating efficiency. Good faith efforts shall be made by the employer to distribute vacation requests for week-ends as equitably as possible.**

### **III. LAW**

Iowa Code Section 20.22(9) provides: The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that let up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to the factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operation.

It is mandated that all issues set forth above are reviewed in light of the foregoing factors. *Iowa State Education Association v. Public Employment Relations Board.*

The weight to be given to each of these factors is placed in the discretion of the arbitrator. *Moravia Community School District v. Moravia Education Association.*

### **IV. BACKGROUND**

Black Hawk County, Iowa, is located in the Northeast quadrant of the State. It is the fourth most populous County in the State of Iowa.

As is the case in a majority of Iowa Counties, a Board of Supervisors manages the County's operations. In Black Hawk County, five (5) members serve this capacity.

The communities of Cedar Falls and Waterloo comprise approximately 80% of the County's population.

The County is host to the University of Northern Iowa as well as a community college. Current major employers include John Deere, Iowa Beef Processors, Covenant Medical Center, and Allen Memorial Hospital. A new gaming casino and 1.3 billion dollar power plant are currently under construction. Black Hawk County has an estimated population of 125,891. According to census figures, this amount reflects a 0.1% increase over numbers from a year earlier.

Waterloo is a community located on the "Avenue of the Saints". This is a four-lane route from St. Paul, Minnesota to St. Louis, Missouri.

The specific bargaining unit before the undersigned is physically located at the Country View Care Facility. The unit is comprised of approximately 122 employees. These employees are supervised by Sherri Niles, Administrator. Country View provides its residents with three levels of care: 24 hour nursing; skilled nursing; and intermediate care facility for the mentally retarded.

The locale involved in this arbitration represents nursing and resident care employees. The County currently has eight (8) certified bargaining units and one group of employees who are not certified. Three (3) are represented by PPME; three (3) are represented by AFSCME; and two (2) are represented by the Teamsters.

## **V. HISTORY**

The parties enjoyed relatively harmonious labor relations from the mid 1970's when they became certified, until 2003. In 1997 the parties did go through Fact-Finding and utilized the recommendations to strike a two (2) year agreement. When interest

arbitration was used in 2003, a tentative agreement was reached with not only this unit's employees, but all of the other seven (7) certified bargaining units. This tentative agreement was then rejected by the Board of Supervisors. Thereafter, the Human Resources Director retired. The Board of Supervisors then retained Ray & Associates to conduct their Labor Relations for the County.

Since 2003, ten (10) fact finding or arbitrations, not including this one, have been submitted to neutrals. **See; County Exhibits** 4, 14, 15, 20, 21, 22, 26, 27, 28, & 29.

The County has also petitioned PERB requesting rulings as to the negotiability of contract Articles contained in its current contract. This also was done with at least one other unit in prior years.

## **VI. COMPARABILITY GROUPS**

The Union proposed in Exhibit #4 to use five (5) of the largest counties in Eastern Iowa for its comparability group. Those counties are:

<u>County</u>	<u>Population</u>	<u>State Rank</u>
Linn	191,701	2
Scott	158,668	3
Johnson	111,006	5
Dubuque	89,143	7
Clinton	50,149	10

The County conversely utilized four (4) of the five (5) comparable counties that the Union uses save for Clinton County. Conversely, they also utilize Pottawattamie and Woodbury in their comparability group.

<u>County</u>	<u>Population</u>	<u>State Rank</u>
Woodbury	103,877	6
Pottawattamie	87,704	8

The Union contended that the geographic non-proximity of the foregoing counties discounted their value.

Conversely, the County used the tax rates, (I-36) school enrollment, (I-38) total valuation (I-39) population change (I-40 & 41) per capita income (I-42); financial base (I-43) and last but not least, free and reduced price school lunches (I-44) to support the comparability of their comparable counties.

Only one (1) county of each of the parties' comparables has a comparable county care facility to Black Hawk's Country View, that is Dubuque County.

#### **VII. ABILITY TO PAY**

One of the only issues that the parties had a meeting of the minds was the fact that with respect to either of the proposals there was no inability to pay contention for said proposals.

#### **VIII. ANALYSIS**

No statement is more cited than the proposition that a party should purchase at the bargaining table a concession rather than obtain it by a neutral's pen. Here, as in most instances, both parties assert this principle when it suits their impasse item's position, but neglect it when it does not support their position. Likewise, both parties desire that this neutral gives all due difference to the fact finder's awards when it parallels their position but wants the neutral to disregard the same when it benefits the opponent.

The history of labor relations in Black Hawk County for the last few years has been somewhat less than harmonious. It is imperative that the undersigned sets forth his analysis of the same at the outset. Certainly the model for labor relations in Black Hawk County has changed from that which it was prior to 2003. That change has been

authorized by the direction the Board of Supervisors. This change is seen by the undersigned as either positive or negative, but rather a management's decision as to how to handle labor relations within their jurisdiction.<sup>1</sup>

The impasse items and subparts will be addressed as set forth as they are outlined in Paragraph II.

Article 13 originally contained three (3) subsections. A PERB decision found those sections permissive and therefore they have been stricken from the contract.

The Union's language would provide compensation for those employees who are designated as stewards or bargaining team members, while involved with Union related activities. The Union related activities include "joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations, or grievance procedures".

Subsection 3 of the prior contract, stewards were authorized to investigate and process grievances during their shift.

The County asserts that this language is far too expansive. The language would provide employees will unfettered discretion to address these matters. Also, that the County has no mechanism in place which notifies them of who are the stewards and bargaining team members.

Ironically, Section 1 of the prior contract addressed this notice issue. It provided "a written list of the names of the stewards or designated representatives of the Union employed by the County will be furnished to the employer by the Union after their designation and all changes in the representation shall be given to the Employer by the Union."

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<sup>1</sup> See: Principles of Labor – Management Relations, Daniel Quinn Mills, pp 43-47

A review of the fact-finder's thoughts on this matter reveal that he believed that in order to maintain an equal playing field for both parties, the inclusion of the Union's language is one in "which brings the Union-management relationship in Black Hawk County, in both spirit and fact into the 21<sup>st</sup> Century."

The second facet of this impasse item relates to revisions to Section 6 of Article 8. This section concerns leaves of absences under the 1993 Federal Family & Medical Leave Act (hereinafter referred to as FMLA).

This modification is being proposed by the County. The Union is opposed to this revision. Under current contract language, the employee has the unilateral right to decide to utilize paid leave of absence prior to receipt of unpaid FMLA leave. An exception to this right is contained within this subsection which permits the County to require an employee to utilize accumulated sick leave in the case of a personal FMLA illness.

The crux of this dispute relates to the concurrent use of paid leave while on FMLA. Currently, the employee does not have to have said leave concurrent with the exception noted above.

County Exhibit L-8A reveals that this unit's employees have the highest level of FMLA leave utilization.

The fact-finder's thoughts on this matter were that paid leave days are a fringe benefit. Use of those benefits are at the choice of the employees. The fact-finder stated "the rationale for the employer, in this case, for attempting to impose its will on the Unit members to take paid days such as vacation time, comp time, personal leave, and so on, while on FMLA leave is unclear." The fact-finder went on to conclude that "it would be good for the parties to gain more experience with using accumulated paid sick leave



which on personal FMLA illness before attempting to make any additional changes to Article 8, Section 6 of the current agreement”.

Item #2 has three (3) components. The first deals with Section 1, “Probable Work Week.” Initially, both parties agree that “Probable Work Week” should be reformatted to “Work Week”.

The substance of the current language in Section 1 is simple: it defines the work week as a 40 hour period of time. The Union’s proposal would vary this time frame reducing it to 36 hours. Conversely, the County would maintain the 40 hour period of time. Both proposals are similar in substance as to part-time employee benefits.

The fact-finder found that “occupational work weeks in the U.S. in all sectors are normally defined as forty (40) hours and not less.”

The second strand of this item involves Section ten (10) which currently provides a formula by which the County will post the work schedule to employees. It also discusses the conditions for modifying said schedule by both parties. Both parties are seeking substantial changes to this subsection.

The Union’s proposal is silent as to the County’s posting of schedules. It defines a work day as 8 hours and a work week as a five (5) day consecutive period. It also mandates employees will have every other weekend off. The proposed article then parallels current contract as to modifications to the schedule.

The County’s proposal maintains the posting requirements but reduces the time span which notifies the employees of the schedule. Currently, that time frame provides for two (2) pay period’s work schedules are to be posted at least three (3) weeks in advance. The County’s proposal would reduce this time frame to one (1) pay period to

be posted at least two (2) weeks in advance. Similar to the Union's proposal, the remainder of their proposal parallels current contract language.

The Union pointed out that this Article was the subject of a negotiability decision by PERB. That last year PERB determined that similar language was permissive. PERB reversed itself this year in finding that this language is mandatory.

The Union asserted that it formatted its language change with the assumption that PERB would rule consistently with its prior decision. The Union informed the undersigned that the past practice was to provide its members with every other weekend off of work. Sherri Niles testified that, in fact, this was true. She, however, revealed that it wasn't always practical to facilitate this type of scheduling. Ms. Niles testified that the current language requirements are extremely burdensome. That due to the facility's frequency of occupancy deviations, a four (4) week schedule posted three (3) weeks in advance, is simply impractical. That the resultant additional expense to staff the facility is substantial. Ms. Niles testified that this proposed shorter time schedule is utilized by the other bargaining unit which also is employed at Country View Care Facility.

The fact-finder found that the current language was not unreasonable nor unworkable and determined it should remain as currently written.

The third and final sub-item involves Section 4, "Reporting Period". The Union and County's proposals on this issue are identical. They vary from current language in that current language only discusses requiring employees to report ten (10) minutes prior to their shifts. The proposed language modification not only requires employees to arrive ten (10) minutes early, but also remain ten (10) minutes after the completion of their shift.

The fact-finder's recommendation deviated from the County/Union's proposal in that this additional time was to be paid "at straight time".

The third impasse item presented, concerns Article 20, "Employee Evaluations". Current contract language requires that employees may grieve the results of a below-average evaluation where the evaluation results in the loss of a merit increase. Simply put, the Union's proposal would delete the requirement of a loss of a merit increase in order to grieve a below-average evaluation. The County desires that current language be maintained.

The Union asserts that since a substantial portion of their membership is at the top of their pay scale; that merit increases are no longer attainable. Therefore, these employees would never be able to grieve a below-average evaluation. The Union points out in their Exhibit #59 that in order for a grievance to proceed, there must be a loss of a merit increase.

The County's position was that one-half (1/2) of the evaluations were going to the below-average and one-half (1/2) were above-average. That this would result in a multiplicity of grievances. During cross-examination of Ms. Niles by the Union, this premise was exposed to be faulty. She testified that, in fact, there were very few below-average evaluations.

The fact-finder identified the problem that where an employee could not lose a merit increase due to their years of service, but if the evaluation was incorrect, they couldn't grieve the same. He concluded that the modification as proposed by the Union be granted.

The fourth impasse item pertains to Health Insurance. As previously mentioned, the parties are in concert as to increasing the employees' monthly contribution from \$25/\$50: single coverage to \$50/\$100 single coverage. Also increasing the co-pay to \$15.00 per physician visits. The parties disagree as to deductible payments. The Union proposes to maintain current deductible amounts of \$250/\$500 single/family coverage. These are the deductibles for preferred provider plans. Non-network providers plan is currently \$600/\$1,200, single/family coverage.

The County desires to modify these deductibles to \$500/\$1,000 single/family for preferred provider plans and \$1,000/\$2,000, single/family for non-network providers.

It was uncontroverted that a substantial majority of health care providers in Black Hawk County are preferred providers. Testimony revealed that very few claims are submitted from non-network providers.

The Union asserted that its members are receiving the lowest range of wages of the County's employees. That the economic effect of raising the monthly contributions and per physician visits exposure will already have a profound impact. That to increase the deductible for both types of providers will have a disproportional impact on their finances. The Union points out in Exhibit #73 that their unit has been progressive in the past in attempting to participate in shouldering the economic impact of this benefit.

Conversely, the County argues that they are expecting a 8.9% increase to the cost of their self-funded insurance program. That because other bargaining units have agreed to these higher deductibles, that they in essence will be subsidizing unit 2 where their deductibles aren't raised. The only other unit, Unit 3, has a contract which provides for

\$250/\$500 and \$600/\$1,200 deductible amounts. Coincidentally, this is the same unit who also works at the Country View Facility.

The Union points out that the reserve funds are below levels recommended by plan consultants. See: County Exhibit INS-3.

That this unit has one of the largest employees base taking insurance and therefore, will have the greatest impact of the self insurance fund. See: County Exhibit INS-4.

The County points out in Exhibit INS-5 that according to their comparables, Black Hawk's costing of insurance is over \$26.00 more than the average.

That the only other unit which has not settled is the County Attorney Unit. With this unit the contribution being requested is \$50/\$150, contribution and physician visit of \$20.00.

The Board declined to follow their consultant's recommendations as to funding this expense for the next fiscal year.

The fact-finder noted that the average hourly wage of this unit's employees and the effect they would have on their economic standing when he stated that the County "would effectively put health care costs beyond the purview of almost all of the members of the bargaining unit if they themselves, or a family member, had any relatively serious, and on going illness".

The fifth impasse item relates to wages of this unit. There are three (3) subcomponents of this item. The first is the across the board increase. Secondly, the increase to the Licensed Practical Nurse category of employee. Lastly, the starting date for when the wages go into affect.

The County proposed a 2.75% increase while the Union urges a 3% increase.

The testimony of Ms. Niles reveals that fact that the County has been unable to fill their employment needs in the Licensed Practical Nurse category of employee.

Consequently, the County spends a substantial premium to outsource this need.

Consequently, a need exists to increase wages for this job classification to stay competitive with the competition as to their wages for like employment.

The parties have two (2) different approaches to resolve this discrepancy. The Union proposes to change LPN employees from their current status as a GS-12 classification to a GS-13 category. Needless to say, per hour compensation increases with the GS number. The County's proposal is to simply increase the GS-12 category by one dollar (\$1.00).

Last, the Union asserts that the effective date for the wage increase should be July 1<sup>st</sup>, the date of the new contract year. The County proposed an effective date of the start of the pay period closest to July 1<sup>st</sup>, 2006.

Addressing the across the board increase, the Union contends that the history of wage increases supports their position. Exhibit #61 reveals the following raises over the last five (5) years.

2006	2.27%
2005	2.00%
2004	4.00%
2003	3.00%
2002	3.00%
	=====
Average	2.854%

A comparison of wages of comparable counties within the Union's grouping reveals a 3.45% average increase. Inclusion of Woodbury and Pottawattamie equals of 3.3% increase. See Union Exhibit #63.

The Union contends that utilizing the County's theory of internal compatibility results in drastic monetary differences due to the base wage variance. See Union Exhibit #66.

The Union asserts that comparing its wages with its only comparable county that has a similar care facility, Dubuque, reveals that its wages are far below Dubuque's employees with similar job classifications. Also, Dubuque's employees received a 4% pay increase.

That inflation in 2005 was 3.4%. That with increased fuel costs this year, inflation should be even greater. Also, increased contribution to health care contributions significantly impacts the net benefit to the employee. Last but not least, Exhibit #72 is a printout of informal contract settlement as reported to PERB.

The County's primary contention is that four (4) of the other bargaining units have accepted a 2.75% pay increase. To maintain internal comparability, this unit should likewise receive a 2.75% increase.

That step increases actually amounts to an additional financial package of 1.7%.

That when looking at a total package increase, the County's offer of 2.75% and step increases, with other benefits, amount to a 6.6% increased cost to the County. \*

\* This is excluding the \$1.00 per hour increase for LPN's.

That 51 of the units' 122 employees or 43.2% will receive not only the increased wage of 2.75% but also a step increase.

The County asserted that a review of State wide averages is not productive since only Dubuque and Black Hawk have County homes.

In reference to wage increases for LPNs, the Union contends that their pay disparity is reflective of the below wages of all their units' employees. That lower wage increases over the last two (2) years have caused this problem. To address this issue, modifying either wage scale will help rectify their situation while maintaining the integrity of their salary matrix. That if this adjustment is not enough, they'll be happy to raise the job classification again next year. Also, past practice has approved of changing job classifications when the employment market reveals that wages become too low for a specific job classification.

The County asserts that its proposal is more generous than the Union's proposal. That the Union's proposal only increases wages from \$.63 to \$.82. See: Exhibit - 8B.

Finally, as the sub-issue relates to commencement of the new salary, the Union contends that the effective date for all other portions of the contract commence July 1, 2006 and consequently so should this increase.

The County asserts that its software is outdated and will not calculate wage changes made in the middle of a pay period. That the salary matrix is simply "a piece of paper" and following the same is not imperative.



The final impasse item concerns "Vacations" pursuant to Article 25. The current vacation language has two (2) formats for processing a request. One, referred to as non-priority requests.

Both parties continue this format. The County's proposal seeks to add the language "These priority vacation requests shall be approved or disapproved no later than May 1<sup>st</sup>. Both parties' language would limit priority vacation requests to a minimum of one-full shift.

Both parties concur that non-priority requests shall be taken in increments of not less than two (2) hours.

The most substantial change by the County concerns their addition of the following language:

**Non-priority vacation requests for week-ends may be restricted by the employer in view of maintaining the department's operating efficiency. Good faith efforts shall be made by the employer to distribute vacation requests for week-ends as equitably as possible.**

This latter language is in conflict with the earlier language which provides that non-priority requests shall be awarded on a first come first served basis not an "equitable" basis.

No testimony was adduced as to the past practice of the parties as to when the employer would notify the employee of their approval of their priority vacation request.

### **IX. DECISION**

Prefatory to awarding my decision it is imperative that I explain the limitations the undersigned is under. I, as an arbitrator, can not simply award the most reasonable of each sub-item, but must rule on them as a single item. This requires the undersigned to weigh the strengths and weaknesses of each party's position on a sub-issue to ultimately

reach an overall decision as to the entire item. This being said, there are certain sub-items which I will be awarding which may not be as reasonable as the other party's proposal on the same.

**IMPASSE ITEM #1. LEAVES OF ABSENCES**

I hereby award and declare that Union's proposal is the most reasonable and should be implemented as to Leaves of Absences.

The reasoning behind this decision is that it comports most closely with the bargaining history and contracts of the parties. It provides the Union with an "equal playing field".

The Union's proposal was also supported by the Fact-finder.

The Union's proposal in this Arbitrator's opinion is the most reasonable in light of the bargaining history and comparable contract provisions.

**IT IS THEREFORE ORDERED** as follows:

Article 13; Stewards, Section 1; shall read as follows:

Employees designated as stewards or bargaining team members by the Union shall receive a paid leave of absence for the employees' hours or work necessary to attend joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations or steps of the grievance procedure and grievance arbitrations.

Article 8; Federal Family and Medical Leave Act, Section 6; shall remain as it currently exists.

**IMPASSE ITEM #2. HOURS OF WORK & OVERTIME**

I hereby award and declare that the County's proposal is the most reasonable and should be implemented.

The rationale behind this decision is that it most closely comports with the bargaining history and contracts of the parties. It parallels current language as to the

number of hours for a work week. Its format as to the work schedule most closely comports with the bargaining history and contracts of the parties. The deviation is consistent with language for the other unit that works at said facility.

The Fact-finder's decision is in err. His probable work week decision has serious flaws. Also, his decision as to "Reporting Period" may, in fact, be in violation of Iowa law.

**IT IS THEREFORE ORDERED** as follows:

**Section 1; Probably Work Week** is deleted and in lieu thereof, the following language shall appear:

Section 1 title be changed from **"Probable Work Week"** to **"Work Week"** and provide as follows:

The normal work week for a full-time employee shall be defined forty hours or more with all benefits. The normal work week for a part-time employee shall be less than forty hours with prorated vacation per Article 25 and prorated insurance per Article 21.

**Section 10; Work Schedule** is hereby deleted and in lieu thereof, the following language shall appear:

Employee's one (1) pay period (two weeks) work schedules should be posted by the Employer at least two (2) weeks in advance. The posted work schedule will not be changed at the employee's request except in case of an emergency or an approved request for time off. Employees shall not be required to find their own replacements in order to have a time off request approved. Except for emergencies and involuntary overtime assignments, schedule changes shall be notified to the employees at least three (3) days in advance.

**Section 4; Reporting Period** is hereby deleted and in lieu thereof, the following language shall appear:

All employees may be required at the discretion of management to report to their work stations at least ten (10) minutes prior to the start of their assigned shifts or remain on duty at the end of the shift for a maximum of ten (10) minutes. The ten (10) minute period either before a shift or at the end of a shift shall be used to

brief staff, exchange resident information, confirm arrival of employees on the next shift and shall be with pay.

**IMPASSE ITEM #3. EVALUATIONS**

I hereby award the County's proposal as to this item.

The reasoning behind this conclusion is that the County's proposal parallels current language. To award the same without negotiation or necessity is unwarranted. This language has been part of the contractual history of the parties. The parties recognized when they agreed to this language that as the salary matrix was aged; certain members of the unit would be disadvantaged.

It is the undersigned's opinion that the Fact-finder's decision did not properly weigh these fact as to this item, as well as others.

**IT IS THEREFORE ORDERED** that **Article 20; Evaluations** shall remain as currently written in the contract.

**IMPASSE ITEM #4. INSURANCE**

I hereby award and declare that the Union's proposal is the most reasonable and should be awarded.

The reasoning behind this decision is that it comports with the history of the parties' bargaining agreements. Secondly, the deductibles are compatible with the care facility's other bargaining units' deductibles. Another important factor is the relative ability of this unit's economic ability to absorb these costs. I do not find that the increased costs to the County for health insurance, warrant the modifications as advocated by the County. Also, Dubuque County's expense exceeds Black Hawk's monthly expense.

**IT IS THEREFORE ORDERED** as follows:

**A. Monthly Premiums.**

The current contract language should be modified to increase the monthly contribution for single coverage insurance from \$25.00 to \$50.00 per month and family coverage from \$50.00 to \$100.00 per month.

**B. Deductibles.**

Maintenance of current language for deductibles.

**IMPASSE ITEM #5. JOB CLASSIFICATION & STRAIGHT-TIME**

**HOULY WAGE**

I hereby award Union's proposal as to "Wages Rates; LPN Salaries, and commencement of said increase".

The rationale behind this award is that the only comparable County that has a County home has given this year a 4.0% increase. The cost of living expense is closer to Union's proposal. The settlements throughout the State as reported by PERB support a 3% increase as apposed to a 2.75% increase.

The most significant evidence is the fact that the Union's proposal to raise LPN's wages \$1.00 would bastardize the salary matrix. Contrary to County's assertions, the salary's matrix is not merely a piece of paper; the matrix is the spinal cord of this contract. Deviation by Arbitrator's pen is unwarranted.

Lastly, the County's contention that its software is unable to update mid-pay period increases is untenable. I concur with Union's position that if the County desires to maintain their current software, they should provide the increased wages in advance of July 1<sup>st</sup>.

The undersigned can not agree with the Fact-finder on this item because of the foregoing rationale.

**IT IS THEREFORE ORDERED** that **Article 19; Section 2** should read as follows:

Reference is made here to Exhibit "B", General Salary Schedule for 2007 fiscal year shall become effective July 1, 2006, and shall remain in effect during the term of this Agreement. The 2007 fiscal year salary schedule shall be an increase of three percent (3.0%) over the previous fiscal year's salary schedule.

In addition, employees eligible to receive an in grade pay increment shall do so pursuant to Article 35 of this Agreement.

Exhibit "A" shall read as follows:

GS-13 Licensed Practical Nurse – and move all LPN's from the employees' GS-12 step to the step on GS-13 on July 1, 2006.

Last but not least, the contract shall receipt that all wage increases becomes effective on the date itself of July 1, 2006.

**IMPASSE ITEM #6. VACATIONS**

I hereby award Union's proposals as to vacations.

The rationale behind this decision is that it most closely complies with current language with modifications recognized by both parties. The proposal by the County seeks to rewrite substantive matters of the contract outside of the give and take of the bargaining table. Further, the Fact-finder's decision reveals that he did not have a full

and abiding understanding of this language and the problems confronting the County with this Article.

**IT IS THEREFORE ORDERED** that **Article 25; Section 4** shall be amended to read as follows:

Vacation shall be scheduled with the approval of the Employer who shall endeavor to schedule vacation with regard to maintaining the department's operating efficiency, and so far as possible in accordance with the employee's preferred requests. Employees may submit priority vacation requests for **one full shift or multiples thereof during** the next fiscal year between March 1 and April 1 of each calendar year. Conflicting priority vacation requests shall be awarded on the basis of the greatest seniority. Non-priority vacation requests submitted after April 1 shall be awarded on a first come, first served basis. Such non-priority requests shall be approved or disapproved by written notice to the employee within seven (7) calendar days of the employee's written request. Vacation leave shall be taken in increments of not less than two (2) hours. There shall be no restrictions placed upon the number of weekends that an employee may request for vacation use. Once a vacation request is approved, it may not be changed without the consent of the employee.

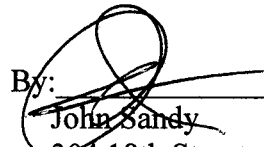
#### **X. CONCLUSION**

It is the undersigned's opinion to award the Union's position as to Items 1, Leave of Absences, Item 4, Insurance, Item 5, Job Classification and Straight-Time Hourly Wage, and Item 6, Vacations.

It is the undersigned's opinion to award the County's position as to Item 2, Hours of Work and Overtime, and Item 3, Evaluations.

Respectfully Submitted,

SANDY LAW FIRM, P.C.

By:   
John Sandy  
304 18th Street  
P.O. Box 445  
Spirit Lake, Iowa 51360, (712) 336-5588

## CERTIFICATE OF SERVICE

I certify that on this 16<sup>th</sup> day of June, 2006, I served the foregoing Arbitrator's Recommendation upon each of the parties to this matter by mailing a copy to them at their respective addresses at shown below:

Joe Rasmussen  
PO Box 69  
Alburnett, IA 52202-0069

Gary Ray  
4403 First Avenue SE, Suite 407  
Cedar Rapids, IA 52402

I further certify that on the 16<sup>th</sup> day of June, 2006, I will submit this Arbitrator's Recommendation for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, IA 50319.



John L. Sandy, Arbitrator

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